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August 2, 1976



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AREA CODE 2 9

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Attorneys at Law  
305 First National Bank Bldg.  
Elkhart, Indiana 46514

Attention: Mr. John R. Harman

In Re: Wiseman &amp; Rumfelt - Elkhart General Hospital

Dear John:

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Thank you for your letter of July 30, 1976, advocating the position that Himco is an independent contractor, disposing of waste products of Elkhart General Hospital, relieves Elkhart General Hospital of any responsibility to my clients. I must disagree with your position, and would refer you to the findings of the following cases: Scott Construction Company vs. Cobb (Ind. 1928) 159 NE 736; Stewart vs. Huff (Ind. 1938) 14 NE 2d 322; Denneau vs. Indiana & Michigan Electric Company (Ind. 1971) 277 NE 2d 8; Hale vs. Peabody Coal Company, (Ind. 1976) 343 NE 2d 310; Shannon vs. Missouri Valley Limestone Company (1963) 122 NW 2d 278.

I believe you will find that these cases state that one who employs an independent contractor to do work is liable for the acts of such contractor where the work will create a nuisance. I believe that under the circumstances in this case, the hospital was disposing of dangerous hazardous waste, was familiar with where it was being dumped, and consequently is responsible.

Elkhart General Hospital will be considered a primary defendant in this case, and jointly liable with all other persons, in causing or maintaining the nuisance in question.

If you would like to discuss this matter further, will you please call me.

Thank you for your consideration.

Very truly yours,

W. Richard Herron

WRH/plg  
cc: Herman Rumfelt  
Warren Wiseman